IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2932 OF 2005

Laxman Gundappa Aparadh ..... Petitioner.

V/s

Bhagwan Keshav Patil & Ors. .....Respondents.

Mr. P.R. Arjunwadkar for the Petitioner

Mr. S.A. Ingawale for Respondent Nos. 1 to 3.

CORAM: V.M. KANADE, J.
DATE : 18th September, 2007

P.C.:

1. Rule.

2. Rule is made returnable forthwith by consent of the parties. Respondents waive service.

3. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent Nos. 1 to 3.

4. Petitioner takes exception to the order passed by the Second Ad-hoc Additional Sessions Judge, Kolhapur whereby he was pleased to allow the revision application filed by Respondent Nos. 1 to 3 herein and quashed the process which was issued by the J.M.F.C. Vadgaon in RCC No.80 of

2002.

5. Brief facts are as under:-

6. Petitioner herein filed a complaint in the Court of J.M.F.C., Vadgaon against Respondent Nos. 1 to 3 herein and two others for offence punishable under sections 193, 101, 511 read with section 34 of the Indian Penal Code. Initially, the learned Magistrate was pleased to direct the police to investigate into the offence under section 156(3) and submit a report. However, the report was not submitted and, therefore, a fresh application was filed and the Magistrate, again, directed Vadgaon Police Station to send a report and, thereafter, the learned Magistrate was pleased to issue process against Respondent Nos. 1 to 3 herein and original accused Nos. 1 and 2. It was alleged in the complaint that the accused Nos. 1 and 2 and Respondent Nos. 1 to 3 herein had, on the basis of the document which was forged by father of Respondent Nos. 1 to 3, had made a change in the record of rights and, accordingly, Mutation Entry to that effect was recorded by Tahsildar. It is alleged that, after the Petitioner herein came to know about the said change in the record of rights, by preferring appeal, the said entry was set aside. It is alleged that certain false statements were also made by the accused in the said proceedings. However, finally, an order was passed in favour of the Petitioner. It is a further grievance of the Petitioner herein that though the accused were aware of these proceedings, again, fresh

proceedings were initiated on similar lines and the application was made on 12/08/1997 to Talathi. In these proceedings also, Petitioner finally succeeded. A grievance of the Petitioner in the said complaint was that the false statements were made by the accused in these proceedings and, therefore, they should be tried for the offence punishable under sections 193, 511 read with section 34 of the Indian Penal Code.

7. The learned Counsel appearing on behalf of the Petitioner submitted that the Sessions Judge had erred in holding that only the Court before whom false statements were made was competent to file a complaint in view of the bar of section 195(1)(b) of the Criminal Procedure Code. He submitted that in cases where documents were forged prior to the said proceedings, an independent complaint should be filed. In support of the said submission, he relied upon the judgments of the Apex Court in the case of Mahadev Bapuji Mahajan (dead) and another vs. State of Maharashtra reported in **AIR 1994 SC 1549** and in the case of Iqbal Singh Marwah and another vs. Meenakshi Marwah and another reported in **(2005) 4 SCC 370.**

8. Mr. Ingawale, the learned Counsel appearing on behalf of Respondent Nos. 1 to 3, on the other hand, submitted that the document which was alleged to be forged was, even according to the Petitioner, forged by father of Respondent Nos. 1 to 3 and that, that was not the subject matter of the

complaint and, as such, the Sessions Court was justified in allowing the revision application filed by Respondent Nos. 1 to 3 herein.

9. In my view, submissions made by the learned Counsel appearing on behalf of the Petitioner cannot be accepted. It is no doubt true that the Apex Court in Iqbal Singh Marwah (supra) has observed that the bar under section 195(1)(b) would not operate in cases of documents which were forged and fabricated before they were used in the court proceedings and the complainant, in such a cases, need not rely on the provisions of section 340 of the Criminal Procedure Code for initiating action against such accused and that he had an independent right to proceed against such accused by filing a private complaint under section 468 of the Indian Penal Code. The Apex Court in para 21 of the said judgment has observed as under:-

> "21. Section 190 CrPC provides that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 CrPC is a sort of exception to this

general provision and creates an embargo upon the power of the court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the court as contemplated by Section 195(1) CrPC is given in Section 340 CrPC and sub-sections (1) and (2) thereof are being reproduced below:

> "340. Procedure in cases mentioned in Section 195.- (1) When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,-
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> (a) record a finding to that effect;
>
> (b) make a complaint thereof in writing;

(c) send it to a Magistrate of the First Class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of Section 195."

However, in the present case, the allegation, essentially, is in

respect of false statements which were made in the revenue proceedings and, therefore, the ratio of the said judgments will not apply to the facts of the present case. In cases where allegation is that the false statements are made then the Court alone before whom such false statements are made would be competent to initiate an inquiry under section 340 of the Criminal Procedure Code. The Trial Court, therefore, in my view, was justified in allowing the revision application filed by the respondents.

10. Mr. Arjunwadkar, the learned Counsel appearing on behalf of the Petitioner vehemently urged that a reference was made to the forged document in the complaint and that the complaint was being initiated in respect of the second round of litigation. He submitted that, therefore, it forms part of the complaint, alleging forgery by the respondents herein. This submission cannot be accepted. Perusal of the complaint discloses that it is averred in the complaint that the father of Respondent Nos. 1 to 3 had forged document on 15/5/1973. A bald statement is made that a fresh application on similar lines, as was made in earlier round of litigation, was again filed. There is, therefore, no specific averment that the said forged document was again used in the second round of litigation which was earlier initiated by the respondents herein. Therefore, since the averments are vague and there is no specific pleading to the effect that the said forged document was again used for the second time, it cannot be said that the complaint was based on the

document which was forged by the father of Respondent Nos. 1 to 3. Hence, there is no merit in the said submission made by the learned Counsel appearing on behalf of the Petitioner.

11. In the result, Writ Petition is dismissed. Rule is discharged. It is clarified that it is open for the Petitioner herein to take out appropriate proceeding before the revenue authorities.

(V.M. KANADE, J.)